

BRODSKY MICKLOW BULL & WEISS LLP  
Kurt Micklow, State Bar No. 113974  
Edward M. Bull III, State Bar No. 141966  
384 Embarcadero West, Suite 200  
Oakland, California, 94607-3704  
Telephone: (510) 268-6180  
Facsimile: (510) 268-6181

Attorneys for Plaintiff  
REGINALD ATTEBURY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

REGINALD ATTEBURY,

Plaintiff,

vs.

TRIPLE STAR LLC, and DOES 1-5, *in personam*, and F/V TRIPLE STAR, her engines, tackle, apparel, furniture, and appurtenances, *in rem*;

Defendants.

CASE NO.

**SEAMAN'S COMPLAINT  
FOR PERSONAL INJURY -  
NEGLIGENCE UNDER THE  
JONES ACT; BREACH OF  
THE WARRANTY OF  
SEAWORTHINESS; AND  
MAINTENANCE AND CURE**

**DEMAND FOR JURY TRIAL**

**[Pursuant to 28 U.S.C. §1916  
Plaintiff is Entitled to File this  
Complaint Without Prepayment  
of Court Filing Fee]**

**I.**

**GENERAL ALLEGATIONS**

1. Plaintiff REGINALD ATTEBURY ("Plaintiff") brings and maintains this action based upon the General Maritime Law pursuant to the United States Constitution Article III, Section 2, the Jones Act, 46 U.S.C. §30104, and 28 U.S.C. §1333.

2. Plaintiff was at all times herein a seaman within the meaning of the Jones Act and the General Maritime Law. As such, Plaintiff is entitled under the provisions of 28 U.S.C. §1916 to bring this Complaint without prepayment of

1 court's filing fee or the posting of a bond.

2 3. Plaintiff is an American citizen and a resident of Eureka, California,  
3 within the Northern District of California.

4 4. At all times herein mentioned, F/V TRIPLE STAR ("the Vessel") was  
5 a United States flagged vessel afloat upon navigable waters of the United States  
6 and/or the high seas. F/V TRIPLE STAR is a commercial fishing vessel with a  
7 United States Coast Guard Documentation number of 611559. Her hailing port is  
8 Eureka, California. Plaintiff is informed and believes that F/V TRIPLE STAR is  
9 or will be within the Northern District of California at some time during the  
10 pendency of this action.

11 5. Plaintiff is informed and believes and thereon alleges that at all times  
12 relevant, Defendants TRIPLE STAR LLC and DOES 1-5 are business entities of  
13 unknown form existing under the laws of a state other than California. Plaintiff is  
14 informed and believes and thereon alleges that Defendants TRIPLE STAR LLC  
15 and DOES 1-5 do business within the State of California and are subject to  
16 personal jurisdiction in this district.

17 6. At all times relevant, Plaintiff is informed and believes that  
18 Defendants TRIPLE STAR LLC and DOES 1-5 were the legal owner and operator  
19 of F/V TRIPLE STAR and that said Vessel was managed, crewed, maintained,  
20 controlled, outfitted and navigated by Defendants TRIPLE STAR LLC and DOES  
21 1-5.

22 7. At all times relevant, Plaintiff was employed by Defendants to work  
23 as a deckhand on the Vessel and had the legal status of a "seaman" within the  
24 meaning of the Jones Act (46 U.S.C. §30104) and under the General Maritime  
25 Law.

26 8. Plaintiff is ignorant of the true names and capacities of the Defendants  
27 sued herein as DOES 1 through 5, and therefore, Plaintiff sues these Defendants by  
28 such fictitious names. Plaintiff will amend the Complaint to allege their true

1 names and capacities when ascertained. In the meantime, Plaintiff is informed and  
 2 believes that each of the fictitiously named Defendants is affiliated in one way or  
 3 another with Defendant TRIPLE STAR LLC and are responsible in some manner  
 4 for the occurrences herein alleged.

5 9. Plaintiff is informed and believes that all of the Defendants, including  
 6 those sued as DOES 1 through 5, were and are the agents, alter egos, partners, joint  
 7 venturers, co-conspirators, principals, shareholders, servants, employers,  
 8 employees of their co-Defendants, and in doing the things hereinafter mentioned,  
 9 were acting within the course and scope of their authority as such agents, alter  
 10 egos, partners, joint venturers, co-conspirators, principals, shareholders, servants,  
 11 employers, and employees with the permission, ratification or consent of their  
 12 co-Defendants and thus are legally liable for all of the damages resulting from the  
 13 acts or omissions of the others.

14 10. On or about April 21, 2012, while working in the course and scope of  
 15 his duties as a deckhand on the Vessel and following the orders and directions of  
 16 the Captain, Plaintiff suffered a severe personal injuries that have disabled him  
 17 working as a fisherman or in any other job.

## 18 II.

### 19 FIRST CLAIM FOR RELIEF

20 **(For Jones Act Negligence Against Defendants TRIPLE STAR LLC and**  
 21 **DOES 1-5, inclusive)**

22 11. Plaintiff refers to and by that reference incorporates as though fully  
 23 set forth herein each and every allegation contained in paragraphs 1 through 10,  
 24 above.

25 12. Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, owed  
 26 Plaintiff a duty to use reasonable care in all aspects of the employment relationship  
 27 between them and, among other things, to provide Plaintiff with a reasonably safe  
 28 place to work.

13. Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, breached this duty of care in a number of ways, including, but not limited to, the following:

(a) failing to properly instruct and train the Captain on identifying, handling and responding to crew member work injuries on board the Vessel;

(b) permitting Plaintiff to work aboard TRIPLE STAR on April 21, 2012, even though the Defendants knew that Plaintiff had a badly swollen left knee due to an aggravation of a prior knee injury;

(c) promising to accommodate Plaintiff's injured knee aboard the Vessel and then not doing so;

(d) failing to keep the Vessel from rolling excessively while Plaintiff was vulnerable to injury in the confined spaces of the fish hold preparing the ice with a leg he could not bend;

(e) failing to send the other healthy deckhand into the fish hold to prepare the ice in stead of Plaintiff, knowing that Plaintiff had an injured left knee;

(f) failing to perform any job hazard analyses concerning the task of preparing the ice in the fish hold for the first catch of the voyage;

(g) requiring Plaintiff to work preparing ice in the confined spaces of the fish hold with his injured left knee (that he was unable to bend at the time) which exposed Plaintiff to substantial risk of personal injury;

(h) failing to exercise ordinary care under the circumstances to have the vessel's training, equipment, work methods and work environments in such a condition that Plaintiff would be able to perform his required duties with reasonable safety; and

(i) failing to provide Plaintiff with a safe place to work.

14. As a result of the aforesaid negligent acts and omissions, among others, Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, breached the duty of care they owed to Plaintiff.

15. As a legal result of such negligence on the part of Defendants TRIPLE

1 STAR LLC and DOES 1-5, inclusive, Plaintiff has sustained physical and  
2 emotional injuries.

3 16. As a further legal result of the negligence of Defendants TRIPLE  
4 STAR LLC and DOES 1-5, inclusive, Plaintiff has sustained and will continue to  
5 sustain economic damages, including without limitation, past and future medical  
6 expenses and past and future loss of earnings and benefits, all of which will be  
7 established at trial according to proof.

8 17. As a further legal result of the negligence of Defendants TRIPLE  
9 STAR LLC and DOES 1-5, inclusive, Plaintiff has incurred and will in the future  
10 incur non-economic damages, including physical and emotional pain and suffering,  
11 all of which will be established at trial according to proof.

### 12 III.

#### 13 **SECOND CLAIM FOR RELIEF**

14 **(For Breach of the Warranty of Seaworthiness *In Personam* Against**  
15 **Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, and *In Rem***  
16 **Against F/V TRIPLE STAR)**

17 18. Plaintiff refers to and by that reference incorporates as though fully  
18 set forth herein each and every allegation contained in paragraphs 1 through 17,  
19 above.

20 19. At all times herein relevant, Plaintiff was acting in the service of M/V  
21 TRIPLE STAR performing duties of the type traditionally performed by a seaman  
22 and whose presence was necessary for the operation of the Vessel.

23 20. By the provisions of the General Maritime Law of the United States,  
24 Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, by and through their  
25 agents, employees and servants, warranted to Plaintiff that TRIPLE STAR, and her  
26 decks, gear, passageways, equipment, appurtenances, tools, crew members,  
27 training, work methods and work environments were seaworthy and in compliance  
28 with applicable laws, statutes, standards and regulations enacted for the safety of

1 the crew.

2 21. As alleged herein, TRIPLE STAR, her decks, lines, gear,  
3 passageways, equipment, appurtenances, tools, crew members, training, work  
4 methods and work environments were not seaworthy and were not in compliance  
5 with applicable laws, statutes, standards and regulations enacted for the safety of  
6 the crew. Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, violated and  
7 breached the warranty of seaworthiness owed Plaintiff in the following respects,  
8 among others:

9 (a) failing to properly instruct and train the Captain on identifying,  
10 handling and responding to crew member work injuries on board the Vessel:

11 (b) permitting Plaintiff to work aboard TRIPLE STAR on April 21, 2012,  
12 even though the Defendants knew that Plaintiff had a badly swollen left knee due  
13 to an aggravation of a prior knee injury;

14 (c) promising to accommodate Plaintiff's injured knee aboard the Vessel  
15 and then not doing so;

16 (d) failing to keep the Vessel from rolling excessively while Plaintiff was  
17 vulnerable to injury in the confined spaces of the fish hold preparing the ice with a  
18 leg he could not bend;

19 (e) failing to send the other healthy deckhand into the fish hold to prepare  
20 the ice in stead of Plaintiff, knowing that Plaintiff had an injured left knee;

21 (f) failing to perform any job hazard analyses concerning the task of  
22 preparing the ice in the fish hold for the first catch of the voyage;

23 (g) requiring Plaintiff to work preparing ice in the confined spaces of the  
24 fish hold with his injured left knee (that he was unable to bend at the time) which  
25 exposed Plaintiff to substantial risk of personal injury;

26 (h) failing to exercise ordinary care under the circumstances to have the  
27 vessel's training, equipment, work methods and work environments in such a  
28 condition that Plaintiff would be able to perform his required duties with

1 reasonable safety;

2 (i) failing to provide Plaintiff with a safe place to work; and

3 (j) failing to install handholds or other safety devices in the fish holds.

4 22. As a legal result of these breaches, Plaintiff sustained physical and  
5 emotional injuries.

6 23. As a further legal result of Defendants' breaches, Plaintiff has  
7 sustained and will continue to sustain economic damages, including without  
8 limitation, past and future medical expenses and past and future loss of earnings  
9 and benefits, all of which will be established at trial according to proof. As a  
10 further legal result of Defendants' breaches, Plaintiff has incurred and will in the  
11 future incur non-economic damages, including physical and emotional pain and  
12 suffering, all of which will be established at trial according to proof.

13 24. Plaintiff has and is asserting herein a maritime lien and an *in rem*  
14 claim against TRIPLE STAR for all of the above described economic and non-  
15 economic damages caused by the unseaworthiness of TRIPLE STAR.

#### 16 IV.

#### 17 THIRD CLAIM FOR RELIEF

18 **(For Maintenance and Cure *In Personam* Against Defendants TRIPLE STAR**  
19 **LLC and DOES 1-5, inclusive, and *In Rem* Against TRIPLE STAR)**

20 25. Plaintiff refers to and by that reference incorporates as though fully  
21 set forth herein each and every allegation contained in paragraphs 1 through 24,  
22 above.

23 26. According to the General Maritime Law, when a seaman becomes ill  
24 or injured while in the service of a vessel, the employer is liable *in personam* and  
25 the Vessel itself is liable *in rem* to provide the seaman with all reasonable medical  
26 care ("cure") and pay to the seaman a reasonable rate of daily financial  
27 maintenance sufficient to cover his room and board ("maintenance") from the date  
28 of his illness or injury until he reaches "maximum cure."

27. Plaintiff aggravated his left knee condition and severely injured his cervical spine, lumbar spine and head while he was aboard and in the service of the Vessel. As such, Defendants TRIPLE STAR LLC and DOES 1-5, inclusive, *in personam* and the Vessel itself *in rem* are legally required to furnish Plaintiff with all maintenance and cure to which he is entitled under the General Maritime Law for and during his curative treatments relating to these injuries.

28. Plaintiff is entitled to recover from Defendants any and all past maintenance and cure unpaid and owing at the time of trial. Defendants also have an obligation to reimburse any and all organizations who have already paid for or provided on a lien basis medical care to Plaintiff relating to these injuries.

29. Plaintiff also has and is asserting herein a maritime lien and an *in rem* claim against F/V TRIPLE STAR for all unpaid maintenance and cure.

#### V.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

1. That process in due form of law, according to the practices of this Honorable Court in causes of admiralty and maritime jurisprudence, may issue against F/V TRIPLE STAR, her engines, tackle, apparel, appurtenances, etc., and that all persons having or claiming any interest therein be cited to appear and answer, under oath, all and singular, the matters alleged herein; that Plaintiff have a judgment for his damages aforesaid, with interest and costs; and that, if necessary, F/V TRIPLE STAR be arrested and sold to satisfy Plaintiff's judgment;

2. That process in due form of law according to the practice of this Honorable Court issue against the *in personam* Defendants, citing them to appear and answer all and singular the matters aforesaid;

3. That Plaintiff have judgment for his past and future economic damages in amounts according to proof at trial;

1           4. That Plaintiff may have judgment for his past and future non-economic  
2 damages in amounts according to proof at trial;

3           5. That Plaintiff be awarded prejudgment interest on the amounts of the  
4 damages awarded;

5           6. That Plaintiff be awarded any maintenance and cure unpaid and owing  
6 at and through the time of trial in amounts necessary to make him whole according  
7 to proof;

8           7. For costs of suit herein; and

9           8. For such other and further relief as this Honorable Court deems just and  
10 proper.

11 DATED: July 2, 2014

Respectfully submitted,

BRODSKY MICKLOW BULL & WEISS LLP

13 By: /s/ Kurt Micklow  
14 Kurt Micklow

15 Attorneys for Plaintiff  
16 REGINAL ATTEBURY

17 **VI.**

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury.

20 DATED: July 2, 2014

Respectfully submitted,

21 BRODSKY MICKLOW BULL & WEISS LLP

22 By: /s/ Kurt Micklow  
23 Kurt Micklow

24 Attorneys for Plaintiff  
25 REGINAL ATTEBURY